



*Building bridges between
criminal justice & behavioral health
to prevent incarceration*

October 17, 2017

TO: Commissioner and Sheriff Bill Brown, Chair of the Criminal Justice and Mental Health Project Subcommittee of the Mental Health Services Oversight and Accountability Commission (MHSOAC) and Honorable Commissioners

FROM: Stephanie Welch, Executive Officer, Council on Mentally Ill Offenders (COMIO), California Department of Corrections and Rehabilitation (CDCR)

SUBJECT: Comments Regarding the Report Entitled, *Together We Can: Reducing Criminal Justice Involvement for People with Mental Illness*

On behalf of the Council on Mentally Ill Offenders (COMIO) we want to thank the Mental Health Services Oversight and Accountability Commission (MHSOAC) for investing the resources and energy required to produce an extremely thoughtful report and set of recommendations regarding the intersection of the criminal justice and behavioral health systems. *Together We Can: Reducing Criminal Justice Involvement for People with Mental Illness* could not be timelier as our state contends with a changing federal landscape while working to capitalize on the opportunities that recent criminal justice and health care reforms offer to reduce incarceration and expand behavioral health services.

As the report acknowledges, reducing the number of individuals with mental illness who are incarcerated is simply “just the right thing to do”. ***Your leadership is needed now to echo a resounding call for investments in community mental health services as an alternative to incarceration.*** Without a commitment to building additional capacity current opportunities cannot be seized. *Such a commitment includes building capacity for a continuum of housing options that are proven to contribute to successful behavioral health outcomes.* We appreciate being able to provide some constructive comments based on our council’s experience and expertise working on similar issues, especially effective prevention, diversion and reentry practices.

General Comments

We strongly support the report’s acknowledgment of examining the intersection of criminal justice and behavioral health within the current environment, including the criminalization of *statuses* that are over-represented among individuals with mental illness and criminal justice involvement such as poverty, homelessness, substance use disorders, and identifying with a culturally underserved group due to race, ethnicity, or sexual orientation.

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Many, if not all, of the recommendations are consistent with themes that we have seen in our work and have observed in the work of others - lack of preventive services and a continuum of crisis services, lack of diversion options, growing numbers of incompetent to stand trial cases, challenges with cross system data-sharing, and a lack of training and technical assistance to support effective practices. The solutions we need to work on are consistent and include:

- a. Collaboration between two very different systems – Criminal Justice and Behavioral Health,
- b. Clarity regarding which alternatives are effective and how they can be paid for, and
- c. Creativity to implement effective alternatives within existing restrictions.

Including personal stories from individuals with lived experience, highlighting exemplary county programs, and sharing input from community forums demonstrates different approaches but also recognizes that there is much work to do especially to address disparities. We would encourage the Commission to consider conducting some follow-up work to further explore these issues.

Above all we encourage that the report send a strong message that leadership is needed at the state and local level to ensure that creating community alternatives to incarceration is the primary objective of investments in prevention strategies and diversion programs. Doing so includes services but also housing options ranging from crisis residential to permanent supportive housing to rental assistance. This will be hard to do without a focused effort on changing beliefs, attitudes, and practices that are rooted in the myths and misperceptions associated with mental illness, substance use disorder and criminal justice involvement. This is no longer just about stigma but policies and actions that are questionably discriminatory. Individuals challenged by behavioral health issues with criminal justice involvement, or not, are our family members, friends, and coworkers and they deserve to get the help they need in the communities we share. We urge you to clearly state that solutions cannot be achieved without ardent efforts to address systemic stigma and resulting discrimination faced daily by this population.

Specific Comments and Suggestions

Recommendation One – California’s mental health agencies, in partnership with law enforcement and others should have a comprehensive prevention-focused plan that reduces the incarceration of mental health consumers in their communities.

The Council strongly supports the need for comprehensive planning to support all efforts to keep individuals with behavioral health challenges from incarceration. Similar to the Commission, we suggest using the Sequential Intercept Model (SIM) to develop such a plan whether this is part of the Mental Health Services Act (MHSA) and/or the Community Correctional Partnership (CCP) planning process. This is critical because prevention is not just the prevention of the initial interaction with the criminal justice system but prevention of repeated interaction, in other words recidivism. Community-based services must be equipped to address the additional unique and often complex needs of individuals with substantial criminal justice system involvement.

While it was not significantly discussed in the report there are noteworthy numbers of individuals returning home from prison or state hospitals with some of the highest needs in our communities. Of the over 35,000 individuals returning home annually, roughly one-third have diagnosable mental health challenges and over half have substance use treatment needs. In strategic partnership with the state, counties can prepare for returning community members and help to protect against homelessness, use of emergency services, and jail admissions. We suggest that such plans developed at the local or state level identify sustainable funding sources for each activity, as well as, a lead entity or agency for implementation. Resources should include federal, state, and local funds recognizing that while grants can often spur innovation and address gaps, they are not enough to support long-term change. On-going and stable sources of funds should be the primary resources supporting a committed diversion effort. In other words, how are Medi-Cal, Public Safety and Behavioral Health Realignment, and MHSA funds supporting comprehensive prevention, diversion, and reentry efforts?

Recommendation Two – The Board of State and Community Corrections should facilitate a collaborative effort with counties to identify, develop, and deploy services and strategies that improve outcomes for mental health consumers in jail.

While this recommendation is specific to in-jail services, it recognizes that individuals with significant impairments that are not a threat to public safety should be candidates for alternative services in the community. We strongly agree with this and want to underscore that such actions should be taken but will require increased communication between systems. In addition to potential incentives provided at the state level, the use of mental health screenings and thorough criminogenic risk and needs assessments could significantly aid in these efforts, at admission but also prior to release as part of comprehensive reentry services.

We also suggest that this section include a recommendation that custody staff receive enhanced training to support positive and effective interactions with a growing jail population of individuals with mental illness. Moreover, such training should be inclusive of strategies to support officer wellness and stress management, recognizing that these are incredibly challenging jobs and a healthy officer is likely more capable of quality performance than one burdened with their own untreated mental health challenges.

Recommendation Three: To reduce the backlog of people found incompetent to stand trial, California must maximize diversion from the criminal justice system. For people who cannot be diverted before trial and are found incompetent to stand trial, the State and counties should expand options for restoring competency.

The Council could not agree with the Commission more regarding the urgency of this recommendation. Solutions to this growing crisis are complex but are grounded in a lack of diversion options at arrest and pre-trial. We would only add, and possibly with the provision of state incentives, that community-based restoration programs should be the priority to address the immediate crisis regarding the backlog.

Recommendation Four: The Council on Mentally Ill Offenders should fortify its efforts to champion collaboration among state agencies to support local efforts to reduce the number of people with mental health needs who become involved in the criminal justice system.

We appreciate the MHSOAC's support of the Council's efforts. We would agree that in the sixteen years since the statute creating the Council was written there have been significant changes in state and local systems and that call for the Council to adapt. This year we began these efforts by updating our name and scope to be aligned with current best practices that acknowledge the need to integrate services for individuals with mental illnesses and substance use disorders. This is particularly imperative for our efforts to prevent and reduce incarceration considering, as you report identifies, that of those with mental illness who are incarcerated, upwards of three-quarters, have a co-occurring substance use disorder. SB 811 was signed into law on September 23rd and effective January 1, 2018 we will be the Council on Criminal Justice and Behavioral Health.

We further agree with your recommendation for enhanced collaboration between the Council and additional state perspectives beyond what is currently represented to prevent incarceration – especially with the BSCC but also the MHSOAC. Moreover, we strongly agree that the Council is the entity to lead a needed process to develop a state plan with appropriate metrics to prevent and reduce the incarceration of individuals with behavioral health issues. Efforts can build upon previous work from entities like the Judicial Council and the work of the Mental Health Issues Implementation Taskforce. Such a process must include the meaningful participation of state departments and agencies to identify how they can play a role in prevention, diversion and successful reentry. We agree so much with this recommendation it is also a recommendation in our annual report due to the legislature in December of this year. There is clearly a case for an urgent investment to create lasting change through strategic state guidance and we welcome playing a management role to accomplish such a task.

Recommendation Five - The California Health and Human Services Agency should clear the path so that data and information technology are used to drive decision-making, identify service gaps, and guide investments in programs to reduce the number of people with mental health needs in the criminal justice system. We agree with this recommendation but want to acknowledge that an additional part of the challenge is siloed funding sources that are accompanied by their own set of reporting requirements including outcomes. Integration efforts may need to act as a catalyst for requirements being simplified so that they support data-sharing and even better support measuring shared outcomes.

Recommendation Six: The State, in partnership with the counties, should expand technical assistance resources to improve cross-professional training, increase the use of data and evaluation, and the dissemination of best practices, including community-driven practices.

We agree and in our work we have strongly advocated for the need for improved training and technical assistance opportunities across and between system partners and see it as an essential element to support the kind of collaboration and shared responsibility between law enforcement and behavioral

health that is needed to prevent the incarceration of individuals with serious mental illness. We would include, as mentioned previously, the additional need for enhanced training for in-custody staff.

Moreover, investigating and promoting best practices, including identifying incentives to encourage implementation, is a statutory responsibility of the Council. We would appreciate any opportunity to work with other state entities and our county partners to identify resources to accomplish improved support for best practices.

In summary we thank the MHSOAC for developing a resource on prevention, diversion and reentry strategies that can be used for several years to come with decision-makers who might not be familiar with the diversity of variables that contribute to high numbers of individuals with mental illness in our jails and prisons. Despite this complexity, if decision-makers at the state and local level focus on creating community alternatives to incarceration as the primary objective of investments, then we will be “doing the right thing” for individuals with significant behavioral health challenges.

Cc: Diane Cummins, Special Advisor to the Governor, State Department of Finance
Kirsten Barlow, Executive Director, County Behavioral Health Directors Associate
Kiyomi Burchill, Assistant Secretary, California Health and Human Services Agency